



FOIP FOLIO

RIGHT TO KNOW WEEK—SEPTEMBER 28 TO OCTOBER 2, 2009

Right to Know Week will soon be here and this year's events promise to be both informative and fun! See our website at <http://www.oipc.sk.ca/RighttoKnow.htm> or the Canada-wide website www.righttoknow.ca for more information.

Culliton Award Nominations

Are you a public sector organization that has demonstrated leadership and innovation in promoting open and accountable government? If so, we URGE you to nominate yourself or another organization for the *Chief Justice E.M. Culliton Right to Know Award* (Culliton Award). Past recipients have been the City of Regina, the Health Quality Council and the Saskatoon Health Region. Check out the details at www.oipc.sk.ca under the *Right to Know* tab. **HURRY, the deadline for nominations is September 15, 2009!**

Keynote Speaker

Janet Keeping is the President of the Sheldon Chumir Foundation for Ethics in Leadership. Janet achieved a Bachelor of Science in Art and Design from the Massachusetts Institute of Technology, an M.A. (Philosophy) and LL.B. from the University of Calgary. She served as the first Executive Director of the Alberta Civil Liberties Research



Centre. (continued on page 2)

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RIGHT TO KNOW WEEK (continued)

She was Director of Russia Programs for and a Research Associate with the Canadian Institute of Resources Law. Her views on access to information have been informed by extensive work in Russia and other nations.

MONDAY, SEPTEMBER 28 RTK WEEK KICK OFF!



The Public is invited to come out and participate in the festivities and have a chance to "unlock the door to your Right to Know" and **WIN A FREE LAPTOP COMPUTER!!**

Location: Riddell Centre, University of Regina
Time: 11:00 a.m. – 1:00 p.m.



TUESDAY, SEPTEMBER 30 & OCTOBER 1 KEYNOTE SPEAKER IN REGINA & SASKATOON!

The public is invited to come out and hear **JANET KEEPING** our keynote speaker for this week. Her presentation is entitled *The Struggle against Corruption: The Right to Know and The Rule of Law – an International Perspective*

Date: Wednesday, September 30
Location: Terrace Rotunda at Innovation Place,
10 Research Drive,
Regina
Time: 4:00 p.m. – 6:00 p.m.
Reception to follow
For more information contact 306.585.5869 or
is_outreach@uregina.ca.

Date: Thursday, October 1
Location: University of Saskatchewan, Room
50, Macpherson Leslie & Tyerman
Lecture Theatre – College of Law
Saskatoon
Time: 11:30 a.m. – 12:30 p.m.
Reception to follow

SEPTEMBER 30 TO OCTOBER 4 REGINA PUBLIC LIBRARY FILM FESTIVAL!

The Regina Public Library recognizes the importance of the public's right to access public documents. The following films will be shown in the RPL Film Theatre, Lower Level Central Library, 2311 – 12th Avenue

War Made Easy
Food, Inc.
The Cove

Visit www.reginalibrary.ca for film descriptions and admission prices.



WHAT CAN INSURERS GET FROM MY DOCTOR?

A common question asked by individuals in Saskatchewan is **"how much information are insurers entitled to in order to process claims for compensation?"** Our view consistently has been that physicians and other health care providers are limited in what they can share by the provisions of *The Health Information Protection Act* (HIPA). These limitations are the requirement for consent for disclosure by trustees to a non-trustee and the 'limiting principle' and 'need to know' requirement in section 23 of HIPA. Another consideration is that if the insurer is the Workers' Compensation Board (WCB) or Saskatchewan Government Insurance (SGI), those two organizations are both government institutions and are subject to certain rules as to what personal health information they can collect and how they collect it. In some cases, the relevant law is instead *The Freedom of Information and Protection of Privacy Act* (FOIP). We have discussed similar considerations dealing with SGI in Investigation Report [H-2004-001](#) and with WCB in Investigation Report [F-2007-001](#). Both reports are available at www.oipc.sk.ca under the *Reports* tab.

The August 2009 issue of the excellent newsletter produced by the New Zealand (NZ) Privacy Commissioner, **Marie Shroff**, includes the article **"Can insurance companies collect full medical notes?"** This responds to an apparent need for clarification with respect to how privacy laws impact the activities of insurers. You can access the NZ newsletter, *PrivateWord* at www.privacy.org.nz. At the same website, you can also find a copy of the New Zealand Commissioner's June 2009 report on insurers' access to medical notes entitled: *Collection of medical notes by insurers – Inquiry by the Privacy Commissioner*.



WILD COYOTE "WHERE THE ANIMALS COME TO PLAY" NIGHTCLUB AND ID SCANNING ISSUES



In a July 2009 Order from **David Loukidelis**, British Columbia Information and Privacy Commissioner, it was determined that a Vancouver nightclub was collecting too much personal information of customers and retaining it too long. The nightclub required patrons to produce ID which was then scanned by the club. Commissioner Loukidelis

acknowledged that it was reasonable for a bar, in order to preserve a safe environment for customers, to identify individuals who are violent or otherwise undesirable for re-entry from a safety perspective. You can read [Order P09-01](#) at www.oipc.bc.ca.

On August 21, 2009 the B.C. Commissioner announced that, through collaboration with TreoScope Technologies Inc. of Vancouver, a solution to this issue has been developed. *EnterSafe* can now be used to collect only the name, photo, birth date and gender of patrons. That information can however only be retained for a transitory 24 hour working period after which it will be completely destroyed. If a patron is determined within the 24 hour period to be violent, that patron's name, photo, date of birth and gender can be kept and shared with other bars using *EnterSafe* for patron safety. You can access the Commissioner's [August 21, 2009 news release](#) at www.oipc.bc.ca.



NEWFOUNDLAND AND LABRADOR OIPC ANNUAL REPORT



The Newfoundland and Labrador Information and Privacy Commissioner's latest Annual Report indicates considerable growth in demand of that office's services.

That office currently has six staff to oversee the

Access to Information and Protection of Privacy Act (ATIPPA). That office has recently assumed oversight responsibility for the privacy portions of ATIPPA proclaimed in force January 16, 2008. The Commissioner, **Ed Ring**, is requesting additional staffing to deal with the anticipated personal health information law now in bill form before the provincial legislature. You can access this Annual Report at www.oipc.gov.nl.ca.

MAXIMIZING COMPLIANCE FOR GREATER TRANSPARENCY

Retiring Information Commissioner of Canada, **Robert Marleau**, has, in his final Annual Report (2008-09), delivered a powerful and compelling case for improvement to the 26-year old Access to Information Act. In his message, Commissioner Marleau stated:

July 2008 marked the 25th anniversary of the Access to Information Act on a rather bittersweet note. It was a moment to celebrate the important democratic leap Canada took in 1983 when it gave citizens the right of access to information held by federal institutions. At the same time, the occasion highlighted just how much the legislation lags behind standards established by other countries and

other Canadian jurisdictions. The Act is still framed within the reality that prevailed a quarter of a century ago. It does not take into account the massive technological changes that have completely reconfigured the information landscape.

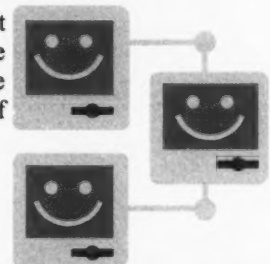
Commissioner Marleau's observation has particular resonance in Saskatchewan since the access portions of our FOIP Act have been closely modelled on that 27 year-old federal statute. You can read the entire document at www.oic-ci.gc.ca.

PRIVACY COMMISSIONER OF CANADA RECOMMENDATIONS ACCEPTED BY FACEBOOK

On July 16, 2009 the Office of the Privacy Commissioner of Canada issued its Investigation Report dealing with the complaint initiated by the Canadian Internet Policy and Public Interest Clinic at the University of Ottawa. The 100 plus pages is a wonderfully thorough report that addresses more than 20 alleged breaches of the Personal Information Protection and Electronic Documents Act (PIPEDA). The report has been read with interest by data protection authorities in many other countries and attracted much favourable commentary. You can access the Report written by Assistant Commissioner

Elizabeth Denham at www.privcom.gc.ca. The complaint is available at www.cippic.ca/uploads/CIPPICFacebookComplaint_29May08.pdf.

Facebook has indicated that it has made and will make further changes to address the documented violations of PIPEDA.





THE SUPREME COURT OF CANADA, GARBAGE AND PRIVACY



Volume 72 of the *Saskatchewan Law Review* includes a very interesting article by **Dr. Richard Jochelson** on the significance of the recent Supreme Court decision in *R. v. Patrick*. The article, entitled *Trashcans and Constitutional Custodians: The Liminal Spaces of Privacy in the*

Wake of Patrick is at page 199. This was the case discussed in the FOIP FOLIO issues from May 2009 (page 6) and August 2008 (page 4) and dealt with whether there is a privacy interest in a bag of trash set out on the edge of an individual's residential property.

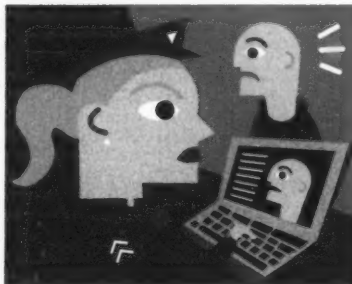
EMPLOYERS ENTITLED TO PREVENT IMPROPER USE OF IT SYSTEM

The Alberta Court of Appeal dismissed an employee's wrongful dismissal claim against his employer. The employee forwarded pornographic images to others using his workplace computer. This was contrary to the company's Code of Conduct. The Court held that the employer was entitled to monitor an employee's

use of the company equipment and resources to ensure compliance. You can access the decision at <http://www.canlii.org/en/ab/abca/216.HTML/doc/2009/2009abca216/2009abca216.html>

MAJOR PRIVACY BREACH IN ALBERTA INVOLVES HEALTH INFORMATION OF PATIENTS

In June 2009, it was learned that someone had hacked into the Alberta Health Services computer system in Edmonton and had the chance to view and record the medical files of 11,582 persons. All 11,582 persons will be notified of the breach and invited to contact Alberta Health to get additional



information. The Edmonton Police Service is investigating the breach. You can access Alberta Commissioner **Frank Work's** [news release](http://www.oipc.ab.ca) at www.oipc.ab.ca.

BRITISH COLUMBIA COMMISSIONER'S ANNUAL REPORT (2008-09)

The Annual Report of Commissioner **David Loukidelis** is always an interesting window into privacy and access practices in British Columbia. As we noted in this office's [2008-09 Annual Report](#), we are concerned that most employees in the Saskatchewan private sector have no legislated privacy protection. It is interesting to read in the British Columbia Report the numerous kinds of cases

involving privacy complaints from private sector employees that have been dealt with under that province's *Personal Information Protection Act*. This office has encouraged our Saskatchewan government to consider a similar approach to remedy this significant deficiency in privacy protection. The B.C. Commissioner's [Annual Report](#) can be viewed at www.oipc.bc.ca.



CONGRATULATIONS ON IMPROVED SECTION 7 COMPLIANCE

Diane Aldridge, our Director of Compliance, advises that Saskatchewan government institutions and local authorities are doing a better job of meeting their requirements to respond to applicants under section 7 of *The Local Authority Freedom of Information and Protection of Privacy* and FOIP. You will recall that two years ago we rolled out our new summary procedure to address a failure of public bodies to meet the requirements of section 7 by responding openly to applicants and in a timely way. We are experiencing fewer cases where this summary procedure need be invoked. We would remind health information trustees that we follow a similar summary procedure in cases where trustees fail to respond to patients/clients as required by section 36 of HIPA. This procedure means that the trustee is given seven days to remedy the breach of section 36 so that we can

proceed to deal with any exemptions on their merits. If the trustee fails to act, the matter is escalated from the Portfolio Officer or Director of Compliance to the Commissioner and notification will follow to the appropriate health profession regulatory body.



CANADA HEALTH INFOWAY 2009-10 BUSINESS PLAN

If you want more information about the development of the electronic health record (EHR) in Saskatchewan and other Canadian jurisdictions, you may be interested in the new Business Plan from Infoway. You can find more information about progress towards the EHR at www.infoway-inforoute.ca.

USEFUL NEW TOOL FOR SMALL AND MEDIUM ENTERPRISES

The Chartered Accountants of Canada have produced *The Canadian Privacy and Data Security Toolkit for Small and Medium Enterprises*. There is useful information on security planning and management, wireless communications, remote-access security and data backup and restoration. To obtain a copy contact the Canadian Institute of Chartered Accountants at 277 Wellington Street West, Toronto, ON M5V 3H2.



REMEMBER! It's your "RIGHT TO KNOW!"

Right to Know Week is September 28—October 2, 2009



MARK YOUR CALENDAR!

September 17 and 18, 2009: *IAPP Privacy Academy 2009*—Boston, Massachusetts (visit www.privacyacademy.org/ for more information)

September 28—October 2, 2009: *Right to Know Week 2009*—Regina and Saskatoon (visit www.oipc.sk.ca/RighttoKnow.htm for more information)

October 26 and 27, 2009: *E-Health Forum*—Calgary, Alberta (visit http://www.insightinfo.com/index.cfm/ci_id/26353/la_id/1/document/1/re_id/0 for more information)

October 29, 2009: *National Association for Information Destruction—Canada Conference*—Toronto, Ontario (visit www.naidcanada.org/index.html for more information)

November 30—December 1, 2009: *Prairie Health Information Privacy Day 2009*—Calgary, Alberta (visit <http://www.verney.ca/phipd2009> for more information)



OFFICE OF THE SASKATCHEWAN INFORMATION AND PRIVACY COMMISSIONER

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